No. 18-266

In the Supreme Court of the United States

THE DUTRA GROUP,

Petitioner,

v.

CHRISTOPHER BATTERTON,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF OF AMICUS CURIAE THE AMERICAN WATERWAYS OPERATORS IN SUPPORT OF PETITIONER

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QUESTION PRESENTED

Whether punitive damages may be awarded to a Jones Act seaman in a personal injury suit alleging a breach of the general maritime duty to provide a seaworthy vessel.

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IDENTITY AND INTEREST OF AMICUS CURIAE

Amicus curiae The American Waterways Operators (AWO) files this brief in support of Petitioner The Dutra Group and urges this Court to reverse the decision below of the Ninth Circuit Court of Appeals.[1]

AWO is the national trade association for the nation's inland and coastal tugboat, towboat, and barge industry. The industry employs over 35,000 mariners and supports a total of over 300,000 jobs.[2] Industry members own and operate nearly 5,500 tugboats and towboats and more than 31,000 barges throughout the country.[3] AWO represents the largest segment of the U.S. flag domestic fleet of Jones Act vessels and mariners. The industry carries more than 760 million tons of domestic cargo worth nearly $300 billion annually.[4] It is a vital segment of America's interstate and coastal transportation system, providing reliable and cost-effective maritime transport in a safe, environmentally sound manner.

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[1] Pursuant to Supreme Court Rule 37.6, AWO certifies that no counsel for any party participated in the drafting of this brief, and no person besides amicus curiae made any monetary contribution intended to fund the preparation or submission of this brief. Both parties have filed blanket consents to the filing of amicus curiae briefs in support of either or neither party.

[2] PRICEWATERHOUSECOOPERS LLP, ECONOMIC CONTRIBUTION OF THE US TUGBOAT, TOWBOAT, AND BARGE INDUSTRY ES-2, 5 (2017), https://tinyurl.com/ybda3llm.

[3] *Id.* at ES-1.

[4] *Id.* at ES-1, 14.

AWO's members have much at stake in this case. If the Ninth Circuit opinion stands, it will seriously impact the economic viability of the industry. AWO's members rely upon the predictability and uniformity of federal maritime law and the boundaries of federal maritime legislation to assess and protect against the risks inherent in maritime commerce. The unpredictability presented by the mere assertion of a claim for punitive damages in a strict liability context, even if meritless, causes a level of uncertainty and risk that will significantly affect the financial stability of vessel owners and operators industry-wide. The general inability of vessel owners to insure against claims for punitive damages, and the significant cost of defending against them, mean that the owner of a tug and barge company who is blameless now faces the risk of a punitive damages claim which could be sufficient to sink his or her business. This risk in turn decreases the ability of the tugboat, towboat, and barge industry to provide the safe, efficient, and environmentally responsible waterborne transportation on which the country relies.

SUMMARY OF ARGUMENT

Miles v. Apex Marine Corp.[5] requires reversal of the Ninth Circuit's holding that punitive damages are available in unseaworthiness actions.[6] In *Miles*, this Court held that the Jones Act defines—and delimits—the tort remedies for a seaman's claim for injury or death based on unseaworthiness. The Jones

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[5] 498 U.S. 19 (1990).

[6] *Batterton v. Dutra Grp.*, 880 F.3d 1089, 1096 (9th Cir. 2018).

Act, with its wholesale incorporation of the tort liability scheme embodied in the Federal Employers' Liability Act ("FELA"),[7] permits only the recovery of compensation for "pecuniary loss" and hence does not permit the recovery of punitive damages. Under *Miles*, this limitation applies to claims for unseaworthiness. The Fifth Circuit, sitting *en banc*, agreed with this conclusion.[8]

The Ninth Circuit held otherwise, reasoning that *Atlantic Sounding Co. v. Townsend*,[9] not *Miles*, controls. *Townsend* holds that the Jones Act does not preclude the recovery of punitive damages for the willful and wanton refusal of a maritime employer to pay benefits known as maintenance and cure to an ill or injured seaman. This Court reasoned that the Jones Act does not address maintenance and cure benefits or the remedies for withholding them. In contrast, *Miles* recognizes that the Jones Act **did** intend to address and modify an employer's tort liability for a seaman's injury or death.

The Ninth Circuit overlooked that important difference. Unlike unseaworthiness, a seaman's claim for wrongful withholding of maintenance and cure benefits is not an alternative to the right to compensatory tort damages under the Jones Act. It is an independent cause of action that has been likened to a contractual right rather than tort liability. *Townsend*

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[7] 45 U.S.C. §§ 51-60.

[8] *McBride v. Estis Well Service, L.L.C.*, 768 F.3d 382 (5th Cir. 2014), *cert. denied* 135 S. Ct. 2310 (2015).

[9] 557 U.S. 404 (2009).

only addressed punitive damages in maintenance and cure actions. *Miles* remains the controlling authority in this case.

Most important, the Ninth Circuit failed to heed this Court's warning that courts in seamen's actions for personal injury or death now "sail in occupied waters" controlled by federal statutory law.[10] When it enacted the Jones Act, Congress occupied the field as it sought to ensure a strong merchant marine through a uniform and comprehensive system of tort liability for injuries to seamen.[11] *Miles* is but the latest in a long line of decisions by this Court establishing that the Jones Act dictates and circumscribes the remedies available in a seaman's claim for damages due to injury or death based on unseaworthiness as well as negligence.

Accordingly, this Court should reverse the Ninth Circuit. To affirm the court of appeals would threaten the sustainability of the U.S. maritime industry, exactly the opposite result that Congress intended when it enacted the Jones Act with the stated purpose to foster a strong U.S. merchant marine fleet "necessary for the national defense and for the proper growth of its foreign and domestic commerce."[12]

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[10] *Miles*, 498 U.S. at 36.

[11] *Lindgren v. United States*, 281 U.S. 38, 46-47 (1930).

[12] Merchant Marine Act of 1920, ch. 250, § 1, 41 Stat. 988, 988, currently codified as amended at 46 U.S.C. § 50501.

ARGUMENT

I. *Miles* Holds That the Jones Act Defines and Delimits the Available Remedies for Unseaworthiness

Miles presented a wrongful death claim seeking compensation for, among other things, loss of society and lost future income of a seaman murdered by a fellow shipmate.[13] Accordingly, *Miles* specifically addressed whether damages for these items were recoverable in a claim for unseaworthiness and held they were not.[14] The premise of the Court's analysis was its recognition that the Jones Act "establishes a uniform system of seamen's tort law."[15]

A. *Miles* Establishes "Fundamental Principles" that Define the Judiciary's Relationship to Congress in Specifying a Seaman's Remedies for Personal Injury or Death

Before turning to the issues before it, the *Miles* Court took pains to set forth "the fundamental principles that guide our decision in this case."[16] Prominent among these was the need for courts to recognize that "[w]e no longer live in an era when seamen and their loved ones must look primarily to the

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[13] *Miles*, 498 U.S. at 21-22.

[14] *Id.* at 22-23.

[15] *Id.* at 29.

[16] *Id.* at 27.

courts as a source of substantive legal protection from injury and death; Congress and the States have legislated extensively in these areas."[17]

Therefore, "an admiralty court should look primarily to these legislative enactments for policy guidance," which "both direct and delimit" judicial action.[18] Courts "may supplement these statutory remedies" to achieve uniformity in vindicating statutory policies, "but we must also keep strictly within the limits imposed by Congress" due to Congress's "superior authority in these matters."[19]

B. *Miles* Holds that the Jones Act Limits the Claimant's Unseaworthiness Recovery to Compensation for "Pecuniary Loss"

In *Miles*, the Court applied these fundamental principles, looking to the substantive legislative enactments to decide the questions before it. The Court recognized that Congress, by incorporating FELA "unaltered" into the Jones Act, "must have intended to incorporate [FELA's] pecuniary limitation on damages."[20] Accordingly, the Court confirmed that the Jones Act "limits recovery to pecuniary loss."[21]

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[17] *Id.*

[18] *Id.*

[19] *Id.*

[20] *Id.* at 32.

[21] *Id.*

The Court then observed that "[i]t would be inconsistent with our place in the constitutional scheme were we to sanction more expansive remedies in a judicially created cause of action in which liability is without fault than Congress has allowed in cases . . . resulting from negligence."[22]

From this reasoning, the Court concluded that the Jones Act's limitation of damages to compensation for "pecuniary loss" applies to unseaworthiness claims as well and, therefore, that there could be no recovery for loss of society in an unseaworthiness action.[23] This holding, the Court explained, would "restore a uniform rule applicable to all actions for the wrongful death of a seaman," whether under the Jones Act or other statute, "or under general maritime law," referring to unseaworthiness.[24]

The Court next determined that damages for a deceased's seaman's lost future income were unavailable as well because FELA's survival provision, which the Jones Act incorporates, limits recovery to losses suffered during the decedent's lifetime.[25] While "general principles of maritime tort law"[26] might favor

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[22] *Id.* at 32-33.

[23] *Id.*

[24] *Id.* at 33.

[25] *Id.* at 35.

[26] *Id.*

this relief, this was "insufficient,"[27] because "[w]e sail in occupied waters," in which "[m]aritime tort law is now dominated by federal statute."[28] In a case involving the death of a seaman, therefore, courts "must look to the Jones Act" which "has limited the survival right for seamen's injuries resulting from negligence," and thereby "forecloses more expansive remedies in a general maritime action founded on strict liability," referring again to unseaworthiness.[29]

Thus, this Court decided *Miles* based on fundamental principles of broad application, which unambiguously apply to unseaworthiness actions. The Jones Act's limitation of a seaman's recovery to compensation for "pecuniary loss,"[30] like other limits on recovery mandated by Congress, is a limit courts "cannot exceed"[31] in an unseaworthiness case. This limitation precludes the award of punitive damages.

C. Limiting Recovery to Compensation for Pecuniary Loss Respects the Jones Act's Comprehensive Tort Liability System for Seamen's Injuries or Death

The fundamental insight of *Miles*—that the Jones Act defines the remedies for unseaworthiness—is

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[27] *Id.* at 36.

[28] *Id.*

[29] *Id.*

[30] *Id.* at 32.

[31] *Id.* at 36.

supported by the Court's recognition that the Jones Act "overruled" *The Osceola*,[32] this Court's first mention of unseaworthiness as a basis for the vessel owner's liability for injuries to members of the vessel's crew.[33] After acknowledging that "statutes of the United States contain no provision upon the subject," *The Osceola* held that a vessel owner was not liable for injuries to a seaman resulting from the negligence of the crew.[34] But the Court noted in dicta that the owner was "liable to an indemnity for injuries received by seamen in consequence of the unseaworthiness of the ship, or a failure to supply and keep in order the proper appliances appurtenant to the ship."[35] This Court's limitation of the owner's obligation to an "indemnity" suggests that the Court had in mind simply an obligation to provide compensation, to make good any loss or damage suffered.[36]

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[32] 189 U.S. 158 (1903).

[33] *Miles*, 498 U.S. at 29.

[34] *The Osceola*, 189 U.S. at 172.

[35] *Id.* at 175.

[36] *Indemnity*, BLACK'S LAW DICTIONARY (10th ed. 2014). Before *The Osceola*, maritime law was concerned with unseaworthiness only in two unrelated situations. First, mariners suing for unpaid wages were required to prove their vessel's unseaworthiness to excuse desertion or misconduct that otherwise would forfeit their right to wages. *Mitchell v. Trawler Racer, Inc.*, 362 U.S. 539, 544 (1960). Second, ancient cargo doctrines allowed cargo owners to recover for cargo damage if the shipowner failed to provide a ship fit to sail and safely carry the cargo. *Id.*; *see also* George H. Chamlee, *The Absolute Warranty of Seaworthiness: A History and Comparative Study*, 24 MERCER L. REV. 519, 521-23 (1973).

Section 33 of the Jones Act effectively overruled *The Osceola*, affirmatively allowing an injured seaman "to bring a civil action at law, with the right of trial by jury, against the employer."[37] It provides that in that civil action the "Laws of the United States regulating recovery for personal injury to . . . a railway employee apply,"[38] thereby incorporating FELA.[39] FELA imposes liability on a railroad common carrier for an employee's injury or death due to "negligence of any of the officers, agents, or employees of such carrier," and for "any defect or insufficiency, due to its negligence, in its cars, engines . . . boats, wharves, or other equipment."[40]

Although the Jones Act did not do away with unseaworthiness as a concept, it rendered unseaworthiness as a theory of liability nearly superfluous, "an obscure and relatively little used remedy."[41] The Act, this Court noted, "obliterated all distinctions between the kinds of negligence for which the shipowner is liable."[42] As this Court stated in 1928:

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[37] Merchant Marine Act of 1920, ch. 250, § 33, 41 Stat. 988, 1007, currently codified at 46 U.S.C. §§ 30104-30105.

[38] *Id.*

[39] *E.g.*, *Miles*, 498 U.S. at 23-24.

[40] 45 U.S.C. §§ 51-52.

[41] *Miles*, 498 U.S. at 25 (quoting GRANT GILMORE & CHARLES BLACK JR., THE LAW OF ADMIRALTY 383, 375 (2d ed. 1975) (internal quotation marks omitted)).

[42] *Mitchell*, 362 U.S. at 546-47.

> whether or not the seaman's injuries were occasioned by the unseaworthiness of the vessel or by the negligence of the master or members of the crew, or both combined, there is but a single wrongful invasion of his primary right of bodily safety and but a single legal wrong for which he is entitled to but one indemnity by way of compensatory damages.[43]

Two years later, this Court proclaimed the Jones Act "a rule of general application in reference to the liability of the owners of vessels for injuries to seamen," one that "covers the entire field of liability for injuries to seamen."[44] Therefore, the Act "is as comprehensive of those instances in which . . . it excludes liability, as of those in which liability is imposed."[45]

Starting in the 1940s, this Court transformed unseaworthiness into "a species of liability without fault" that encompassed a seaman's claims for injury or death arising from the condition of the ship, its crew, and the equipment aboard the vessel.[46] The Court traced the "humble origin" of modern strict liability

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[43] *Pac. S.S. Co. v. Peterson*, 278 U.S. 130, 138 (1928) (citations omitted).

[44] *Lindgren*, 281 U.S. at 47.

[45] *Id.*

[46] *Seas Shipping Co. v. Sieracki*, 328 U.S. 85, 94 (1946); *see also Mahnich v. Southern S.S. Co.*, 321 U.S. 96, 100 (1944).

unseaworthiness to "dictum in an obscure case in 1922," two years after the Jones Act's passage.[47]

It was this development of modern strict liability unseaworthiness that gave rise to this Court's observation in *Miles* that "[i]t would be inconsistent with our place in the constitutional scheme were we to sanction more expansive remedies in a judicially created cause of action in which liability is without fault than Congress has allowed in cases . . . resulting from negligence."[48] Jones Act negligence and unseaworthiness claims are widely recognized as "inseparable and indivisible parts of a single cause of action."[49] To allow the recovery of different damages for negligence and unseaworthiness for a "single legal wrong"[50] would destroy the uniformity of the Jones Act's comprehensive tort liability system for seamen's personal injury and wrongful death claims.

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[47] *Usner v. Luckenbach Overseas Corp.*, 400 U.S. 494, 496-97 & n.4 (1971). This dictum appeared in *Carlisle Packing Co. v. Sandanger*, 259 U.S. 255 (1922). There the Court observed that due to improper gasoline storage the trial court "might have told the jury that without regard to negligence the vessel was unseaworthy when she left the dock if the can marked 'coal oil' contained gasoline; . . . and that if thus unseaworthy and one of the crew received damage as the direct result thereof, he was entitled to recover compensatory damages." *Id.* at 259.

[48] 498 U.S. at 32-33.

[49] Kenneth G. Engerrand & Scott R. Brann, *Troubled Waters for Seamen's Wrongful Death Actions*, 12 J. MAR. L. & COM. 327 (1981).

[50] *Pac. S.S. Co.*, 278 U.S. at 138.

II. *Townsend* Holds that the Jones Act Does Not Address Willful Refusal to Pay Maintenance and Cure or Its Remedy

Nearly two decades after *Miles*, this Court decided *Townsend*. The dispositive question in *Townsend* did not concern tort liability for a seaman's injury or death, but the maintenance and cure benefits owed to a seaman who becomes sick or injured in the course of his or her employment.[51]

Maintenance and cure, rather like workers compensation payments for shoreside workers, requires an employer to provide a sick or injured seaman with health care and compensation for living expenses,[52] and "does not rest upon negligence or culpability on the part of the owner or master."[53] This Court has described maintenance and cure as a contractual right "in the sense that it has its source in a relation which is contractual in origin."[54]

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[51] 557 U.S. at 407.

[52] *E.g.*, *Vaughan v. Atkinson*, 369 U.S. 527, 531 (1962) ("[m]aintenance and cure is designed to provide a seaman with food and lodging when he becomes sick or injured in the ship's service").

[53] *Calmar S.S. Corp. v. Taylor*, 303 U.S. 525, 527 (1938).

[54] *Vaughan*, 369 U.S. at 532-33 (citation omitted) (internal quotation marks omitted).

If the employer wrongfully fails to provide maintenance and cure benefits, a seaman may have a separate cause of action against the employer.[55] But this cause of action is not a tort remedy for damages resulting from the injury-causing incident, and is not an alternative to any claims the seaman might have for negligence and unseaworthiness.[56]

Townsend does not reject *Miles*, and instead affirms that *Miles* "remains sound."[57] *Townsend* distinguishes maintenance and cure from the judicially created cause of action at issue in *Miles*, unseaworthiness, because "the Jones Act does not address maintenance and cure or its remedy."[58] This makes it possible "to adhere to the traditional understanding of maritime actions and remedies without abridging or violating the Jones Act."[59]

Congressional silence regarding maintenance and cure is perhaps understandable, since the deliberate withholding of maintenance and cure payments presents a different situation from that which gives rise to Jones Act and unseaworthiness liability. A claim for failure to pay maintenance and cure does not arise from the condition of the vessel or actions causally related to the injury itself: for example, grease on the

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[55] *Taylor*, 303 U.S. at 528.

[56] *Townsend*, 557 U.S. at 420.

[57] *Id.*

[58] *Id.*

[59] *Id.*

deck, a malfunctioning hatch cover, or an operational error made while facing the perils of the sea. Rather, a decision to withhold maintenance payments or approval of medical treatment is deliberate and generally occurs during the claims-handling process after a seaman's illness or injury has been reported.

Townsend's reasoning does no violence to *Miles*. It simply reflects the indisputable fact that the Jones Act does not address willful refusal to pay maintenance and cure. In contrast, as demonstrated above, the Jones Act **does** comprehensively address personal injury tort liability to a seaman. *Miles*, therefore, not *Townsend*, governs the result in this case. It was this fundamental fact, so central to *Miles*, that the Ninth Circuit failed to appreciate.

III. The Ninth Circuit Erred in Applying *Townsend* Rather than *Miles* to Allow Punitive Damages in an Unseaworthiness Action

With *Miles* and *Townsend* to light its way, the Ninth Circuit undertook its review of the district court's refusal to dismiss Batterton's request for punitive damages. Batterton asserted a demand for punitive damages in connection with his unseaworthiness claim.[60] Both his negligence and unseaworthiness claims sought damages for injuries he sustained when a hatch cover blew open and crushed his left hand.[61]

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[60] *Batterton*, 880 F.3d at 1090-91.

[61] *Id.*

The court initially acknowledged that *Townsend* addresses only maintenance and cure and holds simply "that *Miles* does not limit the availability of punitive damages in maintenance and cure cases."[62] But the court then proceeded to demonstrate its serious misunderstanding of *Miles* and *Townsend*, reasoning that *Townsend* extended "[b]y implication" to "other actions 'under general maritime law,' which includes unseaworthiness claims."[63]

In reaching this conclusion, the Ninth Circuit made three grave errors. First, the court misstated *Miles*'s holding, reasoning that *Miles* "held that damages 'for non-pecuniary loss . . . in a general maritime action' are barred."[64] This does not accurately or fully capture *Miles*'s holding. In fact, *Miles* "limits recovery to pecuniary loss,"[65] a very different proposition. By inserting a double negative, the Ninth Circuit made an error of logic that upended *Miles*. Under *Miles*, punitive damages are **not** recoverable because, as the Ninth Circuit and all parties agree, punitive damages are not compensation for "pecuniary loss."[66] Yet under the

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[62] *Id.* at 1092.

[63] *Id.* (quoting *Townsend*, 552 U.S. at 421).

[64] *Id.* at 1094 (quoting *Miles*, 498 U.S. at 32).

[65] 498 U.S. at 32.

[66] 880 F.3d at 1094. *See Exxon Shipping Co. v. Baker*, 554 U.S. 471, 490-493 (2008) (punitive damages are "separate and distinct from compensatory damages" and "are aimed not at compensation but principally at retribution and deterring harmful conduct"); RESTATEMENT (SECOND) OF TORTS § 908(1) (1979) (punitive

court of appeals' misreading of *Miles*, punitive damages are recoverable because they are not compensation for non-pecuniary loss.[67]

Second, after acknowledging that *Miles* "might arguably be read to suggest that the available damages for a general maritime unseaworthiness claim by an injured seaman should be limited to those damages permissible under the Jones Act for wrongful death," the court of appeals dismissed this reading as a "stretch."[68] This was so, the court of appeals reasoned, because *Miles* states that the Jones Act "evinces no general hostility to recovery under maritime law" and "does not disturb seamen's general maritime claims for injuries resulting from unseaworthiness."[69]

But these propositions in *Miles*, supported by citation to *Peterson*,[70] do not support the court's reasoning. In *Peterson*, a seaman's employer asserted that once a seaman claims maintenance and cure benefits, he may no longer seek compensatory damages under the Jones Act.[71] In holding that maintenance and

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damages are "awarded against a person to punish him for his outrageous conduct and to deter him and others like him from similar conduct in the future").

[67] *Id.* at 1094, 1096.

[68] *Id.* at 1095.

[69] *Id.* (quoting *Miles*, 498 U.S. at 29) (internal quotation marks omitted).

[70] 278 U.S. at 139.

[71] *Id.* at 132-33.

cure benefits were not an alternative to a personal injury tort claim for compensatory damages, this Court underscored that negligence and unseaworthiness arise from "a single wrongful invasion" and are "but a single legal wrong" for which a seaman "is entitled to but one indemnity by way of compensatory damages."[72] Thus, in stating that the Jones Act did not disturb a seaman's right to assert that the unseaworthiness of the vessel was responsible for his injuries, *Miles* in no way suggested that the Court could expand the limit on compensatory damages for seamen's injuries that Congress established with the Jones Act.

Third, the Ninth Circuit attempted to draw a policy distinction between personal injury and wrongful death claims.[73] But there is no statutory basis or policy rationale in an unseaworthiness case for awarding punitive damages when a seaman survives his injuries (Batterton), but prohibiting punitive damages when he does not (Miles). Nothing in the Jones Act (or in FELA, which it incorporates) draws any such distinction or suggests any such policy rationale. In fact, the Jones Act by its terms applies equally to claims for injury or death of a seaman.[74] The Jones Act therefore mandates rejection of the Ninth Circuit's attempt to distinguish *Miles*.

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[72] *Id.* at 138.

[73] 880 F.3d at 1096.

[74] 46 U.S.C. § 30104.

IV. The Ninth Circuit's Ruling Undermines the Viability of the Maritime Industry, Threatening Our Economy and National Security

The viability of the U.S. maritime industry is of great importance to our national security and to the stability of our transportation system. Many are unaware of the key role that waterborne transportation plays in the movement of goods and services throughout our nation. The tugboat, towboat and barge industry alone moves more than 760 million tons of goods worth nearly $300 billion every year,[75] allowing the U.S. to take advantage of one of its greatest natural resources – its 25,000-mile waterway system.

The maritime industry is important not only to everyday commerce; it also plays a crucial role in times of war or other national emergency. Following the September 11 terrorist attacks, vessels operated by AWO members and other members of the maritime community evacuated more than five hundred thousand people from lower Manhattan in just nine hours.[76] U.S.-flag merchant vessels are regularly called into service during times of war.

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[75] PRICEWATERHOUSECOOPERS LLP, ECONOMIC CONTRIBUTION OF THE US TUGBOAT, TOWBOAT, AND BARGE INDUSTRY, ES-1, 14 (2017), https://tinyurl.com/ybda3lhm.

[76] Thomas Allegretti, Remembering the Heroes of the 9/11 Boatlift, THE HILL (Sept. 11, 2014), https://thehill.com/blogs/congress-blog/homeland-security/217322-remembering-the-heroes-of-the-9-11-boatlift.

Congress understood the importance of a strong U.S. flag fleet when it passed the Jones Act, officially known as the Merchant Marine Act of 1920, shortly after our nation emerged from the First World War. Its provisions addressed the protection and promotion of U.S. shipyards, U.S. vessel owners, and American merchant mariners. Congress declared the purpose of the Merchant Marine Act of 1920 in Section 1, which states as follows:

> SEC. 1. PURPOSE AND POLICY OF UNITED STATES.
>
> It is necessary for the national defense and for the proper growth of its foreign and domestic commerce that the United States shall have a merchant marine of the best equipped and most suitable types of vessels sufficient to carry the greater portion of its commerce and serve as a naval or military auxiliary in time of war or national emergency, ultimately to be owned and operated privately by citizens of the United States; and it is declared to be the policy of the United States to do whatever may be necessary to develop and encourage the maintenance of such a merchant marine . . . . and in the administration of the shipping laws keep always in view this purpose and object as the primary end to be attained.[77]

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[77] Merchant Marine Act of 1920, ch. 250 §1, 41 Stat. at 988, currently codified as amended at 46 U.S.C. § 50501.

In undertaking this comprehensive approach to regulating and strengthening the domestic maritime industry, Congress included Section 33 of the Act, addressing recovery for injury to or death of a seaman.[78] This section of the Act incorporated FELA to set forth the correct parameters and standards for a seaman's right to bring a civil action to recover damages for on-the-job injuries or death.[79] As *Miles* makes clear, the incorporation of FELA meant, among other things, that Congress "must have intended to incorporate [FELA's] pecuniary limitation on damages" into seamen's civil actions for damages now allowed under the Jones Act.[80] In doing so, Congress struck a balance, given its purpose and "primary end" of developing and maintaining a strong domestic merchant marine fleet "sufficient to carry" the majority of the nation's commerce, and capable of serving as a "naval or military auxiliary in time of war or national emergency."[81]

The Ninth Circuit's ruling, if accepted by this Court, will have serious repercussions for AWO's members and the maritime industry more generally. Vessel

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[78] *Id.* § 33, 41 Stat. at 1007, currently codified at 46 U.S.C. § 30104. The Act does far more than regulate seamen's tort remedies. It includes, for example, laws protecting U.S. vessels engaged in coastwise trade, and legislation concerning mortgages to finance the construction or purchase of U.S. vessels.

[79] *Id.*

[80] *Miles*, 498 U.S. at 32-33.

[81] Merchant Marine Act of 1920, ch. 250 §1, 41 Stat. at 988, currently codified as amended at 46 U.S.C. § 50501.

owners will face increased litigation and a claim for punitive damages in nearly every seaman's personal injury case. The coercive and other harmful impacts of punitive damages claims are well documented, and Petitioner's summary of those impacts is scholarly and thorough.[82] The mere assertion of a claim for punitive damages, even if meritless, particularly in a claim that does not require proof of knowledge or fault on the part of the vessel owner, drastically increases the uncertainty and risk these cases pose. Vessel owners are generally unable to purchase insurance to protect their businesses against the risk of punitive damage claims, and the cost of defending against them, whether frivolous or not, can be overwhelming.[83]

All of this threatens the financial stability of the U.S. tugboat, towboat and barge industry. The economic pressures created by a punitive damages liability scheme could cause some vessel owners to fail and others to discontinue operations. It may reduce the number of jobs for U.S. mariners, and will almost certainly result in higher prices for consumers. In 1920, when Congress passed the Jones Act, it called for the development and encouragement of a strong U.S.

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[82] Pet'r's Br. 34-40.

[83] For a good discussion regarding the general unavailability of marine insurance for punitive damages, *see* Michael N. Brown, *Marine Insurance for Punitive Damages* (2014), https://www.ajg.com/media/1615159/marine-insurance-forpunitive-damages.pdf.

domestic merchant marine fleet.[84] Affirming the Ninth Circuit's holding would undermine that goal.

Most important, the Ninth Circuit's decision is contrary to the benchmark policy of federal maritime law: uniformity. In *Miles*, this Court recognized the intent of Congress to make federal maritime law uniform and predictable.[85] Congress intended that "federal admiralty law should be 'a system of law coextensive with, and operating uniformly in, the whole country.'"[86] In accordance with this "constitutionally based principle,"[87] maritime law is "a conceptual body whose cardinal mark is uniformity."[88] This fundamental principle of uniformity, with its "companion quality of predictability," benefits all members of the maritime community.[89]

It is important to recognize that the issue before the Court is not whether seamen should be adequately compensated for on-the-job injuries. The remedies allowed by Congress and the Court in *Miles* permit robust compensatory damages for seamen upon proof of negligence or unseaworthiness. The question is

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[84] Merchant Marine Act of 1920, ch. 250 §1, 41 Stat. at 988, currently codified as amended at 46 U.S.C. § 50501.

[85] 498 U.S. at 26-27.

[86] *Id.* at 27 (quoting *Moragne v. States Marine Lines, Inc.*, 398 U.S. 375, 402 (1970)).

[87] *Id.*

[88] *Lewis v. Timco, Inc.*, 716 F.2d 1425, 1428 (5th Cir. 1983).

[89] *Id.*

whether this Court should on its own judgment add punitive damages to the arsenal of tort remedies already chosen with care by Congress, and thus "sanction more expansive remedies in a judicially created cause of action in which liability is without fault than Congress has allowed in cases . . . resulting from negligence."[20] This Court should decline to do so.

CONCLUSION

The decision of the Ninth Circuit Court of Appeals is contrary to the policies and principles espoused by Congress and this Court. The Court should hold that punitive damages are not available in a seaman's action for injury or death based upon the general maritime duty to provide a seaworthy vessel. It should reverse the decision of the Ninth Circuit Court of Appeals.

Respectfully submitted,

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[20] *Miles*, 498 U.S. at 32-33.